

REMARKS/ARGUMENTS

Claims 1-3 and 20-27 are active. Nonelected Claims 4-19 and 28-32 have been cancelled without prejudice to their representation in a Divisional Application. Independent Claim 1 now specifies a yeast content of at least 5%. Support for this amount is found at the bottom of page 24 of the specification and in Table 8 at the top of page 25. No new matter has been added.

The Applicants thank Examiner Lilling for the courteous and helpful discussion of October 31, 2005. To avoid the prior art, it was suggested that independent Claim 1 be amended to specify a yeast content of “at least 5%” and that a Declaration be filed showing that the prior art compositions do not contain yeast in this amount. It was indicated that such a Declaration would be favorably received after final rejection if it would help place the application in condition for allowance.

Restriction

The Restriction Requirement has now been made FINAL and the nonelected claims have been cancelled without prejudice.

Rejection—35 U.S.C. 102/103

Claims 1-3 and 21-24 were rejected under 35 U.S.C. 102(b) as being anticipated by, or in the alternative, as being unpatentable under 35 U.S.C. 103(a) over Muys et al., U.S. Patent No. 3,995,066. The Applicants incorporate their earlier arguments by reference to their prior response.

The attached Declaration shows that the Muys composition does not contain the amount of *Kluyveromyces* yeast required by the present claims (i.e., “at least 5%”). Rather the Muys composition contains no more than 0.015-0.020 (w/w) yeast. A *Kluyveromyces*

yeast of at least 3% is required to reduce cholesterol as also indicated in the Declaration. Thus, the Muys composition does not contain an amount of yeast sufficient to reduce cholesterol and contains much, much less than the 5% yeast content of the present invention. Accordingly, the anticipation rejection may be withdrawn.

The claims have now been limited to a yeast content of "at least 5%". As also shown by the Declaration, the amount of yeast in the Muys composition is much less than 5% and a yeast content of 3% was demonstrated not to bring about a significant reduction in cholesterol. Muys et al. do not disclose, suggest or provide a reasonable expectation of success for the present compositions. Accordingly, the ground of rejection under 35 U.S.C. 103(a) may now be withdrawn.

CONCLUSION

In view of the above amendments and remarks, the Applicants respectfully submit that this application is now in condition for allowance. Early notification to that effect is earnestly solicited.

Respectfully submitted,

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